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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/551,827	07/31/2006	Takeyuki Shiomi	3335-00013	3994

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ANDRUS, SCEALES, STARKE & SAWALL, LLP
100 EAST WISCONSIN AVENUE, SUITE 1100
MILWAUKEE, WI 53202

EXAMINER

HAND, MELANIE JO

ART UNIT	PAPER NUMBER
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3761

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/551,827	Applicant(s) SHIOMI ET AL.	
	Examiner MELANIE J. HAND	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 52-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 52-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/12/09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the cancellation of those claims.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on May 12, 2009 was filed after the mailing date of the non-final action on March 4, 2009. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: there is no antecedent basis for the following: 1) "length direction", 2) "height direction", 3) "first end" (of the auxiliary sheet), 4) "second end" (of the auxiliary sheet)

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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5. Claim 60 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support in the disclosure as originally filed for a pair of elastic members at the end of the first gather sheet. The pair of elastic members supported by the disclosure is present on the end of the second gather sheet, not the first.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 52-56, 59 and 61 are rejected under 35 U.S.C. 102(b) as being anticipated by Mitsuhide Tako (hereafter "Mitushide") (JP H08-001058 U).

8. It is noted that examiner is relying solely upon the English translation of parts of the publication that was provided by applicant and the drawings for this reference. It is also noted that there are several instances in the version submitted by applicant in which two completely different figures have the same number. To avoid confusion, examiner has indicated which page the figure is on that is relied upon.

With respect to **claim 52**: Mitsuhide discloses an absorbent pad for men comprising the following: an absorbent member 3 extending in a length direction, in a width direction that is

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generally transverse to the length direction, and in a height direction that is generally transverse to the length direction and generally transverse to the width direction (Claim 1, Figs. 1,2); a liquid permeable top sheet 2 disposed above the absorbent member 3 in the height direction (Claim 1, Fig. 2); a back sheet 1 disposed below the absorbent member 3 in the height direction (Claim 1, Fig. 2); first and second liquid impermeable gather sheets 7,5, respectively, disposed above the top sheet 2 in the height direction and having ends that face each other in the length direction so as to define an opening therebetween (Page 5, Fig. 2); and an auxiliary sheet 9 for diffusing liquefied excrement disposed above the top sheet 2 and below both of the first and second gather sheets 7,5 in the height direction; wherein the auxiliary sheet 9 has a first end disposed between the top sheet 2 and the first gather sheet 7 in the height direction and a second end disposed between the top sheet 2 and the second gather sheet 5 in the height direction so as to define a genital holding space surrounded by the top sheet, the second gather sheet and the auxiliary sheet. (Page 5, Fig. 2) Examiner's position regarding whether the auxiliary sheet diffuses excrement is based upon the fact that the sheet meets all of the structural limitations of claim 52 and is thus fully functional to diffuse liquid excrement.

With respect to **claim 53**: The top sheet 2 disclosed by Mitsuhide extends between first and second ends in the length direction and wherein the first end of the auxiliary sheet is located between the first end of the top sheet 2 and the first gather sheet 7 in the height direction and wherein the second end of the auxiliary sheet is located on the other side of the opening relative to the first end of the top sheet in the length direction. (Page 5, Fig. 2)

With respect to **claim 54**: The second end of the auxiliary sheet 9 is located between the opening and the second end of the top sheet in the length direction. (Page 5, Fig. 2)

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With respect to **claim 55**: The first gather sheet 7 is longer in the length direction than the second gather sheet 5 so that the opening is not centered above the absorbent member in the length direction. (Page 5, Fig. 2, Page 6, Fig. 3)

With respect to **claim 56**: The auxiliary sheet 9 disclosed by Mitsuhide is separate from the top sheet 2.

With respect to **claim 59**: The absorbent pad for men disclosed by Mitsuhide comprises an elastic member 8 on the second end of the auxiliary sheet 9. (Page 5, Fig. 2)

With respect to **claim 61**: The absorbent pad for men disclosed by Mitsuhide comprises an elastic member 4 provided on the end of the second gather sheet. (Page 5, Fig. 2)

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

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the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 57 and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitsuhide ('058).

With respect to **claim 57**: Mitsuhide does not disclose that the auxiliary sheet is liquid impermeable. However since the sheet contains excrement and prevents leakage and the use of liquid-impermeable sheet materials for features such as leakage barriers, gasket cuffs and backsheets is well known in the art, all of which being features that prevent leakage and soiling, it would be obvious to one of ordinary skill in the art to modify the article of Mitsuhide such that the auxiliary sheet 9 is liquid-impermeable with a reasonable expectation of success.

With respect to **claim 58**: Mitsuhide discloses that the absorbent member is triangular and thus does not disclose that the absorbent member is rectangular. It is examiner's position, however, based upon the configuration of the device in Fig.3 of Page 6 that Mitsuhide fairly suggests a rectangular absorbent member as such a member would easily conform to the structure and the anatomy of the user. Therefore, it would be obvious to one of ordinary skill in the art to modify the article of Mitsuhide such that the absorbent member is rectangular instead of triangular with a reasonable expectation of success to ensure that the member will conform easily to both the profile of the device and the anatomy of the user to perform its intended function.

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12. Claim 60 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mitsuhide ('058) in view of any one of Cinelli et al (U.S. Patent Application Publication No. 2002/0128614), Schmitz et al (U.S. Patent Application Publication No. 2002/0032427) and D'Acchioli et al (U.S. Patent No. 6,951,552), each one individually.

With respect to **claim 60**: The absorbent pad for men disclosed by Mitsuhide comprises a pair of elastic members 4,6, one on the end of the first gather sheet 7 and the second on the end of the second gather sheet 5. Thus, Mitsuhide does not explicitly disclose a pair of elastic members on the end of the first gather sheet. However it is as well known in the art to provide a single elastic member in a gather as it is to provide a pair or several elastic members as supported by each one of Cinelli et al ('614, ¶0151), Schmitz et al ('427, ¶0058), and D'Acchioli et al ('552, Col. 10, lines 30-35) As these elastics provide gathers which impart the gasketing and leakage prevention function, it would be obvious to one of ordinary skill in the art to modify the article of Mitsuhide such that the pad instead comprises a pair of elastic members at the end of the first gather sheet with a reasonable expectation of success to provide a gathering means to define the pocket and contain incoming excrement.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/
Examiner, Art Unit 3761

/Tatyana Zalukaeva/
Supervisory Patent Examiner, Art Unit 3761